

In the Matter of The Village Green at the North End
of the Village of Long Marston, Long Marston,
Warwickshire

DECISION

This reference relates to the question of the ownership of land known as The Village Green at the north end of the village of Long Marston, Long Marston, being the land comprised in the Land Section of Register Unit No. VG76 in the Register of Town or Village Greens maintained by the Warwickshire County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference the Marston Sicca Parish and Mr and Mrs D Lake claimed to be the freehold owners of the land in question and no other person claimed to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Stratford-on-Avon on 3 February 1982.

At the hearing Mr and Mrs Lake were represented by Mr D Edwards, solicitor, and there was no appearance on behalf of the Parish Council.

Mr and Mrs Lake are the owners of a house known as Rose Cottage, the curtilage of which abuts on the north side of the land in question. Rose Cottage was conveyed to Mr and Mrs Lake by a conveyance made 17 April 1970 between (1) Albert John Jelfs (2) David Lake and Janet Wendy Lake. In addition to Rose Cottage, the vendor conveyed the land the subject of the reference for all his estate and interest therein. The conveyance was supported by a statutory declaration by Mr Jelfs that he had since 13 October 1954 been in undisturbed and undisputed possession of the land in question, subject only to a public right of way over it and that to the best of his knowledge, information, and belief his predecessors in title had had "the same use" of the land between 20 February 1941 and 13 October 1954. There was also a statutory declaration made 28 May 1942 by Mrs Agnes Leah Allard, a predecessor in title of Mr Jelfs, that since 20 February 1941 she had been in undisturbed and undisputed possession of the land in question over which there was a public right of way subject only to such right of way.

These statutory declarations fall far short of proving a possessory title to the land in question. They state only that Mr Jelf and his predecessors in title had been in undisturbed and undisputed possession of the land. Whether they were in possession is a question of law to be determined after a consideration of the acts of the persons in question on or in relation to the land.

Evidence was given by Mr Harry Tandy, who has lived for 39 years in a cottage to the east of the land in question, the only access to which is across that land. Mr Tandy said that Mr Jelfs used the land as a way to Rose Cottage, but made no other use of it. Since they bought Rose Cottage in 1970 Mr and Mrs Lake have cut the grass on the part of the land adjoining Rose Cottage and have also

put a flower border in it.

On this evidence I have come to the conclusion that Mr and Mrs Lake's predecessors in title at Rose Cottage were not in possession of the land in question, while Mr and Mrs Lake have not been in possession of the part adjoining Rose Cottage long enough to have acquired a possessory title to it.

However, this does not conclude the matter so far as Mr and Mrs Lake are concerned. According to the statutory declarations, there is a public right of way across the land. That being so, there is a presumption that the owners of the land on either side own the soil as far as the centre of the highway.

I am therefore satisfied that Mr and Mrs Lake are the owners of the northern half of the land, and I shall accordingly direct the Warwickshire County Council, as registration authority, to register them as the owners of that half of the land under section 8(2) of the act of 1965.

In the absence of any evidence as to the ownership of the land to the south of the land the subject of the reference I can do no other than direct the County Council to register the Marston Sicca Parish Council as the owner of the southern half of the land under section 8(3) of the Act of 1965.

I am required by regulation 30(1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this decision as being erroneous in point of law may, within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

Dated this

11th

day of

February

1982

G. L. G. G.

Chief Commons Commissioner